

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rate Adjustment Due to Extraordinary or
Exceptional Circumstances

Docket No. R2013-11R

PUBLIC REPRESENTATIVE COMMENTS CONCERNING
METHODOLOGICAL APPROACH FOR ACCOUNTING FOR VOLUME LOSSES
DUE TO THE GREAT RECESSION

(June 26, 2015)

On June 5, 2015, the United States Court of Appeals for the District of Columbia (Court) issued its decision concerning a petition for review of the Postal Regulatory Commission's (Commission) Order No. 1926.¹ Order No. 1926 granted a United States Postal Service (Postal Service) request for an exigent price increase.²

The Court addresses two concepts developed in Order No. 1926 that are pertinent to these comments: the "new normal" rule, and the "count once" rule. The Court endorsed the new normal rule as being applicable to identifying "a stopping point for the recession's exigent impact on lost mail volume."³ Simply stated, the new normal represents the new levels of mail volumes once the exigency is no longer influencing mail volumes.⁴ The Court did not endorse the count once rule. It stated that the count once rule does not "recognize the cost to the Postal Service of lost mail volume beyond

¹ Alliance of Nonprofit Mailers v. Postal Regulatory Commission, 2015 WL 3513394 (D.C. Cir. June 5, 2015) (Remand).

² Docket No. R2013-11, Order No. 1926, Order Granting Exigent Price Increase, December 24, 2013 (Order No. 1926).

³ Remand at 11-15, 16.

⁴ The specific four-part test for determining when the new normal has arrived appears in Order No. 1926, at 86.

the year in which it first disappeared.”⁵ The Court vacated the count once rule appearing in Order No. 1926 and remanded the case for further consideration.

The Public Representative interprets the Court’s opinion as finding that it is inconsistent, and thus arbitrary and capricious, to only count the loss of mail volume once in the year that it occurred, while at the same time stating that it has taken longer than one year to reach the new normal. The Court seems to imply that the cumulative mail piece loss should be counted until the new normal is reached.⁶

The Public Representative believes that the Court was correct in finding the count once rule arbitrary and capricious. As will be discussed below, although lost mail volume is important, estimating the loss of mail is only the starting point to determining an allowable amount to be recovered due to an exigent circumstance. The count once rule, by itself, is too simplistic and does not provide an accurate estimate of allowable recovery from an exigency.

The Public Representative also believes that estimating the exigency loss by factoring in the cumulative mail piece loss until the new normal is reached, as implied by the Court, is equally arbitrary and capricious. The same could be said for arbitrarily selecting any timeframe, *e.g.*, less than one year, or greater than the time needed to reach the new normal. Other than its usefulness in making a very rough estimate of potential loss, or as a starting point for future calculations, focusing on such a timeframe to mechanically count lost mail pieces will not lead to a meaningful estimate of the amount that the Postal Service should be allowed to recover due to the exigent circumstance. Focusing on such a timeframe diverts attention from properly estimating a loss due to an exigency.

⁵ Remand at 15.

⁶ Even though the implication is apparent in the decision, the Public Representative does not believe that the Court is assuming the role of the Commission and dictating that this is the appropriate outcome. It is the Commission’s role at this time, and not the Court’s, to appropriately resolve the conflict identified by the Court, and to reach a decision that is not arbitrary and capricious.

The Public Representative previously discussed an approach for determining exigent losses.

...The Public Representative would argue that the Postal Service could justify an exigent request for the 'temporary' cost sustaining the postal network because of a decrease in contribution from lost mail volume. The Postal Service could also recover the 'one time' cost of right-sizing its network for anticipated future mail volumes.

The 'one time' cost of right-sizing the postal network has not been estimated by the Postal Service in this docket, nor has a plan been presented which explains how this would be accomplished. There is no doubt that the costs will be more difficult for the Postal Service to estimate than a comparable private corporation because of its statutory and unionized workforce requirements.

Along with the one-time cost, the Postal Service also would have to estimate how long right-sizing might take. This time is used to determine the duration of the 'temporary' component of recovery.

The 'temporary' cost of a decrease in contribution from lost mail volume is the other cost that may be recovered. The magnitude of the recovery can be based on an estimate of volume loss over time due to the recession, being careful not to include volume loss from electronic diversion and other unrelated factors. The time limitation to this recovery would be equivalent to the time required to right-size the network.

Assuming that incremental progress is made on right-sizing the network, the total 'temporary' cost recovery can be adjusted downward. This is to account for the fact that network capacity will be reduced over time and the Postal Service need not be made whole to pay for network capacity that no longer exists.

Docket No. R2013-11, Public Representative Comments in Response to the Exigent Request of the United States Postal Service, November 26, 2013, at 21-22.

In the exigency docket, the Postal Service had not presented an estimate of one-time costs for rightsizing its network.⁷ The Postal Service's presentation is more closely related to recovering the temporary costs caused by decreased mail volumes due to the

⁷ The Public Representative believes that the Postal Service might have been able to justify substantial reorganization/right-sizing costs. However, this approach was not taken by the Postal Service.

recession. Calculating this loss is not as simple as arbitrarily choosing a time period over which to mechanically count lost mail volume. Other than by coincidence, the allowable time period need not coincide with the time required to reach the new normal.

One way to calculate the temporary cost would be to compare the operational capacity of the Postal Service (in mail pieces per unit of time) with the mail volumes presented to the Postal Service (in mail pieces per unit of time) over time.⁸ The beginning point for the analysis is the time that the exigency started. The ending point is the time when the operational capacity of the network approximates the new normal for mail volumes. Decreasing mail volumes over time factor into the analysis. The continuing efforts to right-size the network factor into the analysis.⁹ The analysis must exclude non-exigent factors. The analysis must evaluate whether management is acting under best practices of honest, efficient, and economical management.

The Public Representative first assumed that the Postal Service would present an estimate for recovering temporary costs at the time it initially filed its exigent request. Because of the difficulty in making such estimates at that time, the estimate was likely to be imprecise. However, a significant period of time has passed since the occurrence of the exigency, and the Postal Service has had a significant amount of time to adjust its network to the new normal. The Postal Service can now estimate its exigent mail volume declines based on actual historical mail volume data. It also has actual information to estimate how rapidly it was able to adjust network capacity to approximate new normal mail volumes. This allows the Postal Service to produce a more accurate estimate of the amount to be recovered related to temporary costs. The Commission should request that the Postal Service provide this information.

⁸ The term “operational capacity” is not being precisely defined at this point, other than recognizing that there are different before and after operational capacities to economically handling mail volumes that make business sense.

⁹ The Public Representative submits that right-sizing must begin as soon as the exigency is realized in light of a requirement that management operate “under best practices of honest, efficient, and economical management.” See 39 U.S.C. § 3622(d)(1)(E).

In conclusion, the time taken to reach the new normal influences the analysis. However, mechanically counting mail pieces up to the exact time when the new normal is reached is not the correct approach to determining a recovery amount. Any mechanical counting approach, whether it is based on the “count once” rule, or a calculation based on the time when the new normal is reached, will lead to an arbitrary and capricious result. What is important is the time it takes for operational capacity to approximate predictable (new normal) mail volumes under best practices of honest, efficient, and economical management.

The Commission should undertake an in-depth analysis more in line with the “temporary” cost recovery approach as presented above. Due to the passage of time, the analysis can be based on actual data, and need not rely on estimations. The analysis might lead to an allowable recovery that is either greater than or less than the previous Commission estimate, but at least it will be based on an economically defensible methodology.

Respectfully submitted,

James Waclawski
Public Representative

901 New York Ave. NW, Ste 200
Washington, DC 20268-0001
202-789-6826, FAX 202-789-6861
james.waclawski@prc.gov